IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 30057 of 2006(C)

PETITIONERS:

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1. **K.A.KALAM, CHIRAYILPUTHEN VEEDU, ERUVA, KAYAMKULAM.**

2. **P.K.KOCHUKUNJU, SHEEJA MANZIL, KAYAMKULAM.**

3. **JOSEPH JOHN, S/O.JOHN, KANNAYIL HOUSE, BANK ROAD, KAYAMKULAM.**

BY ADV. SRI.P.V.BABY
SMT.RINNEY STEPHEN
SRI.A.N.SANTHOSH
SRI.R.KIRAN

RESPONDENTS:

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1. **THE ALLEPPEY CO-OPERATIVE SPINNING MILLS LTD (ST)-8, KAREELAKULANGARA P.O., KAYAMKULAM, ALAPPUZHA DISTRICT, REPRESENTED BY ITS GENERAL MANAGER.**

2. **THE DIRECTOR, KERALA HANDLOOM AND TEXTILES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

3. **THE RETURNING OFFICER, THE ALLEPPEY CO-OPERATIVE SPINNING MILLS LTD. (ST)-8, DEPUTY REGISTRAR, DISTRICT INDUSTRIES CENTRE, ALAPPUZHA.**

BY ADV. SRI.K.SASIKUMAR
BY SR.GOVERNMENT PLEADER SRI.P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007 ALONG WITH WPC NO. 30748 OF 2006, THE COURT ON 20/03/2007 DELIVERED THE FOLLOWING:

WPC.NO.30057/2006 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF NOTIFICATION DTD. 27/10/2006 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: COPY OF THE PRELIMINARY VOTERS LIST OF THE 1ST RESPONDENT PUBLISHED BY THE 3RD RESPONDENT.

EXT.P3: COPY OF THE OBJECTION DTD. 11/11/2006 SUBMITTED BY THE 1ST PETITIONER TO THE 3RD RESPONDENT.

EXT.P4: COPY OF THE OBJECTION DTD. 11/11/2006 SUBMITTED BY THE 2ND PETITIONER TO THE 3RD RESPONDENT.

EXT.P5: COPY OF THE OBJECTION DTD. 11/11/2006 SUBMITTED BY THE 3RD PETITIONER TO THE 3RD RESPONDENT.

EXT.P6: COPY OF THE RECEIPT DTD. 11/11/2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: COPY OF THE RECEIPT DTD. 11/11/2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P8: COPY OF THE RECEIPT DTD. 11/11/2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P9: COPY OF THE NEWS ITEM APPEARED IN THE MALAYALAM MANORAMA DAILY DTD. 11/11/2006.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE PROCEEDINGS OF THE JOINT REGISTRAR, ALAPPUZHA WITH THE DEFECTS/OBJECTION.

EXT.R1(B): COPY OF THE PROCEEDINGS DTD. 1/04/1988 ISSUED BY THE RETURNING OFFICER OF THE 1ST RESPONDENT SOCIETY FOR THE ELECTION HELD ON 4/04/1988.

EXT.R1(C): COPY OF THE ADMISSION REGISTER IN RESPECT OF CERTAIN MEMBER OF THE 1ST RESPONDENT SOCIETY.

/TRUE COPY/

KSS

S.SIRI JAGAN, J.

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W.P.(C).No.30057 & 30748 of 2006

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Dated this the 20th day of March, 2007

J U D G M E N T

In these two writ petitions, the issue raised by the petitioners is the same, but the grounds on which the petitioners have set up their respective cases are different. The issue is whether the voters list published by the 3rd respondent-Returning Officer appointed by the administrator of the Alleppey Co-operative Spinning Mills Ltd. (ST)-8, the 1st respondent in W.P(C).No.30057/2006 and the 2nd respondent in the other (hereinafter referred to as 'the Society') for election to the society is legally sustainable and whether the election notified on 26-11-2006 can be validly conducted on the basis of such an electoral roll/voters list. In W.P(C).No.30057/2006 the complaint is that eligible members of the society are left out from the voters' list and in W.P(C). No.30748/2006, the complaint is that ineligible

persons who have not been validly enrolled have been included in the list. Ever since the inception of the Society on 20.2.1982, except for the period from 1988 to 1992, the society was administered either by the nominated committee at the time of formation of the Society or the administrative committee appointed by the Government. It so happened that the initially nominated committee, subsequent administrative committees and the elected committee in between all had enrolled members in the society. However, nobody challenged such enrolment of the members in the society by the administrative committees and as a result, those members continued and even now continues to be members of the society, enjoying the facilities and privileges provided by the society to its members, although they never had occasion to be included as voters, since election never took place after the first election in 1988. The petitioners in W.P(C) No.30057/2006 contend that although this Court in a Full Bench decision,

which was later affirmed by the Supreme Court held that the administrator or the administrative committee appointed by the Government does not have power to enrol members, in view of the later Full Bench decision in Cherthala Agrl. R.D. Bank v. Joint Registrar, 2000 (1) KLT 730 (F.B), all the members who were enrolled prior to 28-8-1998, which is the date of the decision of the Full Bench of this Court in Hassan v. Joint Registrar of Co-operative Societies, [1988 (2) KLT 746], which held that the administrator does not have power to enrol new members, should be included in the voters list prepared for the present election. In W.P(C) No.30748/2006, the petitioners submit that the members bearing membership nos. 163 to 461 enrolled by the administrative committee, which was in charge of the society from 12-10-1987 to 12-4-1988 should be excluded from the voters list, since the administrative committee did not have powers to enrol them.

2. The background in which these disputes

arose is this. The society was registered in the year 1982 and the first nominated committee was in charge for the period from 22-2-1982 to 12-10-1987. That committee enrolled 99 individuals and 63 societies as members of the society making a total membership of 162. From 12-10-1987 to 12-4-1988, the society was under the administration of an administrative committee appointed by the Government which also enrolled 298 members comprised of 44 societies and 254 individuals. For the period from 12-4-1988 to 12-2-1992, the society was under the control of an elected committee which enrolled 12 societies as members. Although for the period from 12-2-1992 to 20-12-1995 also administrative committee was in charge, that committee did not enrol any members in the society. Another administrative committee took charge and continued to administer the society from 20-12-1995 to 24-12-1996. This committee enrolled 736 additional members comprised of 41 societies and 695 individuals. Later on, another

administrative committee took charge and was in office for the period from 24-5-1996 to 28-5-2001. This committee also enrolled members in the society totalling 1338 comprised of 51 societies and 1287 individuals. From 28-5-2001 onwards, another administrative committee is in charge, which did not enrol any members in the society, presumably because of the Full Bench decision of this Court in Hassan's case (supra) which was confirmed by the Supreme Court in Joint registrar of Co-operative Societies v. T.A. Kuttappan, 2000 (2) KLT 480 (SC). The administrative committee decided to conduct election to the managing committee of the society and accordingly, the 3rd respondent was appointed as the Returning Officer, who published Ext. P1 election notification fixing the date of election as 26-11-2006 and published Ext. P2 voters list comprised of only 473 voters. This appears to be those members who were enrolled up to 12-2-1992 when the only elected committee vacated the office. Ext. P1 election notification and Ext. P2

voters list are under challenge in these writ petitions. As I have already mentioned, in W.P(C) No. 30057/2006, the petitioners pray that all those members who were admitted as members up to 28-8-1998 should be included in the voters list and election conducted in accordance with such revised voters list. In the other writ petition, the petitioners want to quash the election notification and electoral list and to redo the election process by excluding the members holding member nos. 163 to 461 who were enrolled by the administrative committee in office during the period from 12-10-1987 to 12-4-1988 from the present voters list comprised of 473 members.

3. Needless to say, although the latent purpose behind both these writ petitions appears to be the same, the prayers are conflicting. This I say because, counsel appearing for the petitioners in both these writ petitions submitted before me that they are going together in this litigation. Apparently, their intention is that if

one writ petition fails, the other should succeed, in which case the purpose of these writ petitions would be achieved either way, which is presumably political and it is common knowledge that political considerations have permeated the election process in almost all co-operative societies in Kerala which is gaining dangerous proportions these days, even thwarting the democratic nature of the elections to the societies.

4. The contentions of the petitioner in W.P(C) No. 30057/2006 are as follows. Formerly, the law prevailing on the question of powers of the administrator to enrol members in a society, which is under the administration of an administrator or administrative committee was in the affirmative, i.e. the administrator or the Administrative Committee had the power to enrol members. That position changed later, and ultimately the law on the subject was settled by the Full Bench of this Court in Hassan's case (Supra). That decision was rendered on 28-8-1998 and principles stated

therein was later confirmed by the Supreme Court in Kuttappan's case (supra). In the decision of the later Full Bench in Cherthala Agrl. R.D. Bank's case (supra) it was held that the decision in Hassan's case is only prospective in effect and therefore all members enrolled prior to 28-8-1998, namely, the date of the decision in Hassan's case should be considered as validly enrolled members. Further, the petitioners would contend that all along, these members who were enrolled even by the administrative committee, continued to enjoy all the privileges and benefits available to the members of the society and nobody ever objected to their continuance as members of the society and therefore they are still continuing as members of the society. Hence, going by Sections 16, 17, 19, 20 and 27 of the Kerala Co-operative Societies Act and Rules 27 and 28 of the Kerala Co-operative Societies Rules, which relate to enrolling of members of the society and cancellation of such membership, in so far as all those procedure

prescribed in the Act and Rules have been followed in the matter of enrolment of those members and they have not been validly removed from membership as provided under the Rules, they cannot now be denied the right to vote in the election to the managing committee of the society on the ground that they are not validly enrolled members. Of course, the petitioners would concede that in view of the Full Bench decision in Cherthala Agrl. R.D. Bank's case, only those members who have been so enrolled by the Administrator or Administrative Committee till 28-8-1998, namely, the date of the decision in Hassan's case, only can be allowed to vote in the election. The petitioners have got a further contention that Ext. P2 voters list prepared by the 3rd respondent-Returning Officer, does not satisfy the mandatory provisions of Rule 35(3)(b) in so far as the particulars prescribed in the said Rule have not been incorporated therein. In this connection, they would rely on the decision of this Court in Thankappan & others, v. Co-

operative Tribunal and others, 1979 KLT 528, which lays down that every sub-rule mentioned in Rule 35 is mandatory and violation of any one provision in Rule 35 would vitiate the election and make it void. The allegation of the petitioners is that Ext. P2 voters list does not contain the fathers' name of the voters which is a mandatory requirement of Rule 35(3)(b). They also refer to another decision of this Court in Devassy v. Asst. Registrar of Co-operative Societies, 1976 KLT 40 wherein also it has been held that a proper electoral roll is fundamental factor before the election is actually held and if the same has been prepared in violation of Rule 35, this Court can step in even before the election is actually conducted and prevent the election being held on the imperfect electoral rolls, exercising jurisdiction under Article 226 of the Constitution of India.

5. In answer to the same, counsel for the 3rd respondent-Returning Officer, with the help of the

counter affidavit, particularly, Ext. R1(a) audit certificate of the Registrar of the Co-operative Societies (Audit), which pointed out that in view of Kuttappan's case (supra), the members enrolled by administrative committees are not entitled to be included in the voters' list and contended that the Returning Officer cannot be found fault with for not including those members who have been enrolled by administrative committees which were holding charge of the society subsequent to the date when the elected committee went out of the office on 12-2-1992. Since the last elected committee was in power only till that date, the Returning Officer has included only those members who were on the rolls of members of the society up to that date in the voters' list, which, according to 3rd respondent, is perfectly valid and proper in view of the decision of the Full Bench in Hassan's case as confirmed by the Supreme Court in Kuttappan's case.

6. Learned counsel for the 3rd respondent as

well as the learned Government Pleader appearing for respondents 1 and 2 would raise a contention that in any event, since the process of election has already been set in motion, the only remedy available to the petitioners now is to file an election petition after the election is over and they cannot canvass these issues in a writ petition under Article 226 of the Constitution of India, which is the settled law on the subject as laid down by decisions of this Court and the Supreme Court of India. Although this contention is a formidable one, which goes to the root of the writ petitions themselves, a decision in respect thereof against the petitioners would entail dismissal of the writ petition without going into the merits of the contentions of the petitioners. But in view of the peculiar circumstances of this case, even if I hold the question of law as to the maintainability of the writ petitions against the petitioners, I am inclined to mould the relief appropriately in favour of the petitioners for

reasons to be stated hereinafter. Therefore, I intend to go into the merits of the case as well as the question of law on the maintainability of the writ petitions. In such circumstance, I consider that first I should consider the merits of the case on facts.

7. The petitioners in W.P(C) No. 30748/2006 have, in the course of arguments, supplied to me in a tabular form, the periods during which various committees were administering the society and the number of persons enrolled by by them as members during their tenure. Although there is a slight mistake of one number in the same, the parties to the writ petitions generally agree that the information contained therein is substantially correct. Therefore, I shall re-produce the same here for convenience. The same reads thus:

Chairman	***Period***	***Number & Nature of Membership***	***Share holders Serial number Societies & Individuals***
Thachady Prabhakaran	22.02.1982 to 12.10.1987	99 Individuals 63 Societies 162	1 to 99 1 to 63

Chairman	***Period***	***Number & Nature of Membership***	***Share holders Serial number Societies & Individuals***
Babu Rajendran Administrative Committee	12.10.1987 to 12.04.1988	44 Societies 254 Individuals 298	100 to 143 64 to 317
M.R. Rajasekharan (Elected Committee)	12.04.1988 to 12.02.1992	12 Societies	144 to 155
(Administra-tive Committee)	12.02.1992 to 20.12.1995	No Enrolment	
Thachady Prabhakaran (Administra-tive Committee)	20.12.1995 to 24.12.1996	41 Societies 695 Individuals 736	156 to 196 318 to 1012
G. Sudhakaran (Administrative Committee)	20.05.1996 to 28.5.2001	51 Societies 1287 Individuals 1338	197 to 247 1013 to 2299
D. Vijayakumar (Administrative Committee)	28.5.2001	No Enrolment	

From the same, it is crystal clear that as on today, there are 2547 members in the society whose membership has not been questioned by anybody through the procedure prescribed by the Kerala Co-operative Societies Act and Rules nor has their membership been cancelled in accordance with the

Act and Rules. As such, they continue to enjoy the privileges and benefits of their membership even as on today. It is not disputed before me that prior to the Full Bench decision in Hassan's case, the law on the powers of the administrator or Administrative Committee to enrol members in a society was in a fluid state and it had been finally crystalised and settled only by the decision in Hassan's case on 28-8-1998.

8. Although it is settled law that the High Court does not have the power of prospective overruling, which power only vests with the Supreme Court (See the decision of a Division Bench of this Court in Porinchu v. Joint Registrar, 2004 (1) KLT 281), a Full Bench of this Court in Cherthala Agrl. R.D. Bank's case, considered the question as to whether regardless of the fact that the High Court does not have power of prospective overruling, whether in a particular set of facts, the High Court can mould the reliefs to suit a peculiar situation and held thus in paragraphs 12,

13, 20 and 21:

"12. We are of the view it will be highly unjust to expel members who were enrolled years back by administrators at a time this Court had interpreted the law that the administrators have such power. Especially, it is so as there was no challenge against their membership all these years. We also agree with the petitioners that such action would be against the interest of the societies and also against public interest. But the question raised is whether this Court has the power to mould the relief in such a manner.

13. In *L.C.Golak Nath & Ors. v. State of Punjab & Anr.* , AIR 1967 SC 1643, the Supreme Court applied the doctrine of prospective over-ruling. Since the above doctrine was being applied for the first time in this country, the Supreme Court laid down the following propositions:

"(51). As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions:-

(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the Country, i.e, the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retrospective operation of the law declared by the Supreme Court superseding its "earlier decisions" is lift to its discretion to be moulded in accordance with the justice of the cause or matter before it."

It is contended before us that this Court has the power to apply the doctrine of prospective overruling in the present case. But there are several decisions of the Supreme Court where relief was so moulded not to affect past transactions in public interest. In Managing Director, ECIL, Hyderabad, etc. v. B.Karunakar, etc. AIR 1994 SC 1074 the question whether the law laid down in Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, should be made only prospective in operation was considered and it was observed as follows:

"....As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy if the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To re-open all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account."

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20. In the present case there is no dispute regarding the appointment of the administrators, but the dispute relates to their exercise of certain jurisdiction which they had in them according to the interpretation of S.33(4) by the binding decision of this Court during the relevant period. In AIR 1992 SC 90, Pritam Pal. v. High Court of Madhya Pradesh, while considering the power of the High Court as a Court of record it was observed that the power is inherent, elastic, unfettered and not subjected to any limit. As observed by the Supreme Court in AIR 1980 SC page 1037, it is open to this Court while exercising flexible power under Art.226 of the Constitution to take such a view as public interest dictates and equity projects.

21. According to us, if we have to hold that in the light of the declaration of law in 1998 (2) KLT 746 all members enrolled by the administrators from the year 1981 onwards or even earlier period are disqualified, it would certainly end up the

> functioning of the societies in chaos. Such an action will be totally against public interest. According to us, this Court will be fully justified in holding that the decision will have only prospective effect. We make it clear that parties to the Original Petitions which were subject matter of the Full Bench decision are bound by the judgment."

Going by the said decision, the decision in Hassan's case would have effect in practice, in respect of the co-operative societies in Kerala, only with effect from the date of that decision, namely, 28-8-1998. Therefore, despite the contention of the respondents to the effect that since the High Court has no power of prospective overruling, the members enrolled by the administrative committees cannot be held to be validly admitted as members, I am of opinion that in view of the fact that the Full Bench decision has become final and it has been accepted that in co-operative societies in Kerala, the memberships of the members who have been enrolled by administrators/administrative committees up to 28-8-1998 cannot now be held to be invalid. It follows therefrom that all those members who have been enrolled and are in the list of members of the

society as on 28.8.1998 are entitled to be included in the voters list and therefore the impugned voters' list is liable to be set aside.

9. Having held that the voters list for the purpose of the present election of the society in these writ petitions are to include members who were enrolled up to 28-8-1998, I shall now proceed to examine the question as to whether these writ petitions are maintainable and this Court can interfere in the election process as the election process has already been set in motion.

10. In the decision of Gopalan v. Joint Registrar of Co-operative Societies reported in 1985 KLT 446, a learned Single Judge of this court examined the question as to whether, in spite of the existence of a statutory remedy by way of an election petition, the election process can be interfered with by this court under Article 226 of the Constitution of India, when the process itself is vitiated. In that decision in paragraphs 25 and 28, the learned Single Judge held as follows:-

> "25. Having come to the conclusion that the election is vitiated, the further question is whether the discretion of the court should be exercised by interfering with such an illegal election for the reason that the party can have recourse to to a statutory remedy. It is now well-settled that the existence of an alternative remedy, would not, by itself, dissuade a court from exercising its discretion and interfering with the decision, if justice demands it. No doubt, the existence of that remedy would normally be taken note of, before the extra-ordinary jurisdiction is invoked.
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> 28. Every attempt must therefore be made by all concerned to ensure that the purity of election process is not in any way impaired, whether it be to the Lok Sabha or to the local authority; or to a co-operative society. A co-operative society is also a socially relevant democratic institution functioning at the grass-root level. In that view of the matter, the court should be anxious to ensure that proper functioning of the democratic institutions is not interfered with, for short term benefits of a few, or a group of, individuals. These considerations have persuaded me to exercise the discretion under Article 226 and declare the election as null and void. On an examination of the materials, files and records, I have come to the conclusion that the election process has been vitiated, from its commencement to its culmination."

11. In Devassy's case (supra), this court held that proper electoral roll is a fundamental factor before the election is actually held and if the complaint is that no such roll has been prepared in accordance with the Rules, this Court can certainly step in, even before the election is actually held and prevent the election being held on the

imperfect electoral rolls, exercising its jurisdiction under Article 226 of the Constitution. Again another learned Single Judge of this Court in the decision in Joseph v. Kothamangalam Co-op. M.Society Ltd. reported in 1994 (1) KLT 828, in paragraph 3 has held as follows:-

> "3. If the voter's complete name is not mentioned, it is difficult to identify who the member is. It is the statutory requirement of Rule 35(b) that the list "shall specify the admission number, name of the member, name of the Father or Husband and the address of such member". Such specification is essential for the constitution of a credible list of members qualified to vote. The petitioner is right in his submission that in the absence of the requisite particulars elections are likely to be prejudiced, confusing in the process the candidates, their agents and voters. In my opinion, the election cannot proceed on the basis of such a list."

These decisions, no doubt, would go to show that the electoral roll is the *sine qua non* of an election and any election proposed to be conducted with an illegally and arbitrarily prepared electoral roll should not be allowed to proceed if a person having locus standi challenging the election comes before this court invoking the jurisdiction under Article 226 of the Constitution at the time of preparation of the voters' list

itself. In this case, immediately after the publishing the voters' list calling for the objections, the petitioners have filed objections to the voters' list which have been rejected. The petitioners have promptly approached this court challenging the orders rejecting their objections as well as the voters' list itself.

12. The respondents, on the other hand, would contend that it is settled law that once the election process is set in motion, this court shall not stall the election in any manner and the only remedy available to anybody against the procedure adopted in the election is to file an election petition. They would point out that as per explanation to Section 69(2)(c) it has been made abundantly clear that the election process commences with the convening of the general body meeting for the election. Therefore, after the publication of the election notification, the court shall not interfere with the conduct of the election in any manner in exercise of jurisdiction

under Article 226 of the Constitution and relegate the party challenging any steps in the election process to the remedy by way of filing an election petition as provided under the Kerala Co-operative Societies Act after the election is over. They would also point out that under Section 69(2)(c), any dispute arising in connection with the election to the Board of Management or any officer of the society, is a dispute coming within the purview of Section 69(1). Section 69(2)(c) reads thus:

> "(c) any dispute arising in connection with the election of the Board of Management or any officer of the society.
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> **Explanation**:- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election."

13. The learned Government Pleader relies on the decision of the Supreme Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. vs. State of Maharashtra and ors. reported in 2001 (8) SCC 509, in support of his contention that the High Court should not stay the continuation of the election

process, even if there is breach of any rule while preparing the electoral roll. The counsel for the third respondent would point out a Division Bench decision of this court in *Subramanian v. Devicolam Taluk Plantation Workers Co-op. Credit Society* reported in 2004 (3) KLT, S.N.105, (Case No.145), in which it has been held that in respect of the objection to inclusion of certain persons in the final list of candidates, the courts shall not interfere with the election process which had already commenced.

14. I have given my anxious consideration to the contentions of both sides. I am of opinion that the election conducted under the Representation of Peoples Act and that conducted under the Kerala Co-operative Societies Act cannot be viewed similarly. In respect of the election to the Legislative Assemblies and to the Parliament, elections are conducted by the Election commission, which is an independent constitutional body vested with wide powers to regulate the process of

election. On the other hand, now-a-days elections to co-operative societies have been degraded to dirty political games wherein the political party in power in the State all resources under their control to wrest control of co-operative societies in the State by manipulating the election process itself, especially in the elections in societies run by the administrative committees appointed by the Government. The Kerala Co-operative Societies Act does not contain a provision similar to Article 329 of the Constitution of India, which bars interference by courts in matters relating to elections to House of Parliament or Legislatures of States. The Returning Officer appointed for the election is not an independent person, but an officer of the Government. It would be easy for the political party in power to get the Returning Officer to dance to their tunes because he is an officer under the control of the Government. Often he would be powerless to resist the unofficial directions issued by the powers-that-be in the

matter of elections to the co-operative societies so as to ensure the success of candidates supported by the political party in power in the election. Funds of the co-operative societies belong to the members of the society, who are ordinary people within the area of operation of the society. It is with their money that the society has to conduct the election. Now-a-days, going by the number of writ petitions coming up before the High Court complaining of maladministration and mismanagement of societies, it is clear that the financial position of many of the co-operative societies in Kerala are so bad that it would not be in the interest of the society to go through the entire election process afresh, if, in an election petition the entire electoral roll is found to be invalid, by conducting a second election spending large sums of money. Therefore, it has to be seriously considered as to whether the same yardstick as applicable to law relating to the elections under the Representation of Peoples Act

or even that relating to Local Bodies should be applied to the elections in co-operative societies.

15. However, in the decision of the Division Bench of this court in Subramanian's case (supra) it has been held as follows:

> "The learned Single Judge was right in refusing to invoke his jurisdiction under Art.226 of the Constitution of India to interfere with the election process which had already commenced. As per the Explanation under S.69(2)(c), a dispute arising at any stage of the election commencing from the convening of the General Body Meeting for the election shall be deemed to be a dispute arising in connection with the election. In the present case, the dispute arose at the stage of the scrutiny of the nomination papers. During the scrutiny of the nomination papers the appellants questioned the eligibility of respondents 4 and 11 to be candidates in the election on the ground that they were disqualified under S.28(2)(a) and (b) of the Kerala Co-operative Societies Act and R.47 of the Government Servants' Conduct Rules. Overruling the said objection, respondents 4 and 11 were included in the final list of candidates. If respondents 4 and 11 were disqualified to be candidates in the election, their election, if any, can be challenged by raising a dispute under S.69 of the Kerala Co-operative Societies Act. Such a dispute will be a dispute which arose after the convening of the General Body Meeting for the election. As already mentioned, the General Body Meeting was convened as per Ext.P1 notification dated 28.7.2004 and the dispute regarding the disqualification of respondents 4 and 1 arose on 18.8.2004, ie. the date of scrutiny of the nomination papers. Hence we have no doubt that the above dispute is a dispute coming under the purview of S.69 of the Kerala Co-operative Societies Act.

Similarly, another Division Bench, in Madhavan Namboodiri v. Kammaran [1999 (2) KLT 567], in paragraph 18 has held as follows:

> "18. As stated earlier, in pursuance to the direction given by the learned Single Judge, the election has already taken place and the new office-bearers have taken charge. Counsel for the appellant contended that the voters' list was not properly prepared and many eligible voters were excluded. In a proceeding under Art.226 of the Constitution of India this Court cannot go into those questions which are pure questions of fact, and the remedy of the appellant, if he is aggrieved, is to move an election petition under the provisions of the Co-operative Societies Act. We have decided in this appeal only the question as to whether the Managing Committee has jurisdiction to conduct election on the adjourned date as the election could not be held on the date originally fixed. We have not considered the question as to whether any voter has been excluded from the voters' list as alleged by the appellant and the remedy of the appellant, if any, under the Act to raise that question is left open and he will be free to raise it before the appropriate forum."

In this connection I may also refer to another Single Bench decision in *James Varghese v. The Aided School Teachers Co-op. Society Ltd*. reported in 2003(3) KLT S.N.98, (Case No.125), which reads thus:

> "Proceedings of election to Co-operative Societies are governed by R.35A of the Kerala Co-operative Societies Act and that calls for examination of the provisions with respect to the said statute. After notifying the election, an electoral officer has been entrusted with duty to finalise the list and it could be corrected even two days prior to the date of election. This cannot be treated as an independent proceedings. The issue comes within the process of election and therefore the remedy available might be an election petition. The possible dispute of facts also would render an examination of the petitioners' case virtually beyond the jurisdictional limits of this Court. The Kerala Co-operative Societies Act and Rules are specific, when they say that once a person

> gets membership, though there might be subsequent disqualification, notice has nevertheless to be issued to the persons concerned and only after hearing their views it may possible to remove such members from the rolls. The statute does not refer to any automatic cessation of membership, the relevant provisions being Rules 16(3) and 16(4)."

The Supreme has in the decision of Shri Sant Sadguru Janardan Swami's case (supra) in paragraph 12 held thus:

> "12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

16. Going by the above decisions, it would appear that the very same law as applicable to the elections in the Representatives of Peoples Act is considered as applicable to the elections to the co-operative societies also In spite of the said legal position, I am of opinion that in view of the facts that (a) the petitioners in these cases have approached this court immediately after the

electoral roll has been published, that (b) this court stayed the election which was slated to be conducted on 26.11.2006, that (c) going by the Full Bench in Cherthala Agrl. R.D.Bank's case (supra) it is virtually certain that ultimately, if an election petition is to be filed, Ext.P2 voters' list would have to be set aside and recast including the members enrolled upto 28.8.1998 and that (d) there is a probability of election itself being set aside in such election petition after the election, I do not think the society should be burdened with such wasteful expenditure of a second election which the society can ill-afford, in so far as this court has stayed the election process at the stage of the electoral roll itself. In this connection, it would be useful to refer to a decision of the Supreme Court in *Election Commission of India v. Ashok Kumar* [(2000) 8 SCC 216], which actually related to an election under the Representation of Peoples Act to which Article 329 of the Constitution of India applies. In

paragraph 20 of that decision, Supreme Court held thus, referring to circumstances in which a judicial review of the process of election was considered feasible/possible.

> "20. Vide para 29 *in Mohinder Singh Gill* case the Constitution Bench noticed two types of decisions and two types of decisions and two types of challenges: the first relating to proceedings which interfere with the progress of the election and the second which *accelerate* the completion of the election and acts in furtherance of an election. A reading of *Mohinder Singh Gill* case points out that there may be a few controversies which may not attract the wrath of Article 329(b). To wit:
>
> > (*i*) power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility however cannot be ruled out where the repository of power may act in breach of law or arbitrarily or mala fide.
> >
> > (*ii)* A dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the the course of the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law.
>
> In Mohinder Singh Gill case this Court gives an example (vide para 34) Say after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30 if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of preventing an election and not

promoting it, the Court's intervention in such a case will facilitate the flow and not stop the election stream."

Again in that decision the Court summed up the law on the subject in paragraph 32 thus:

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(*1*) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(*2*) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or

> to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.
>
> (5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Case has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

I am therefore, inclined to mould the reliefs appropriately, in spite of the legal position as obtaining in the decisions referred to above.

17. In this view, I am supported by the decision of the Supreme Court in Pundlik v. State of Maharashtra and Others [(2005) 7 SCC 181], in which, after holding that normally the High Court should not interfere at the stage of preparation of voters' list, in view of a situation somewhat similar to the present cases, the court moulded the

relief to suit the circumstances, interfered with the voters' list and granted relief. In paragraph 9 of the decision it was held thus:

> "9. We are unable to uphold the contention. In *Sant Sadguru Janardan Swami* this court had an occasion to consider the relevant provisions of the Act and the Rules. Referring to Section 144-X of the Act, the Court observed that preparation of list of voters is one of the stages of election. It is true that according to this Court, normally the High Court would not interfere in exercise of powers under Article 226 of the Constitution at the stage of preparation of list of voters but such action must be in accordance with law."

Thereafter, in paragraph 23 the Court, taking into account subsequent developments in that case held thus:

> "23. Finally, it was stated that the election notification was issued by Respondent 2, the Collector, on 28-7-2005 and hence, now, this Court may not interfere as the election process has already started. We would have considered the effect of issuance of the election notification by Respondent 2 the Collector but we are not inclined to enter into the larger question in the light of the subsequent development which has been brought to our notice. It was stated by the learned counsel for the appellant and not disputed by the learned counsel for the respondents that due to "heavy rains", the government order dated 28-7-2005 was modified by another notification dated 29-7-2005, and the election process which was to start as per the notification dated 28-7-2005 was adjourned for a period of one month and now it will start from 28-8-2005. The said date has so far not come and hence, relief in favour of the appellant can be granted."

18. In these cases also as per Ext.P1

notification, the election was originally scheduled to be held on 26.11.2006. This court by order dated 15.11.2006 granted a stay of further proceedings pursuant to the election notification. In such circumstances, a situation similar to that in Pundlik's case has arisen here which would justify grant of relief in favour of the petitioner in view of my finding based on the Full Bench decision in Cherthala Agrl. R.D.Bank's case, that all members enrolled upto 28.8.1998 ought to have been included in the voters' list.

19. In so far as W.P(C).No. 30748 of 2006 is concerned, I do not find any merit in the contentions raised therein. What the petitioners want is to exclude the members who have been inducted during the reign of the administrative committee which was in office from 12.10.1987 to 12.4.1988. Subsequently the elected committee was in office during the period from 12.4.1988 to 12.2.1992, who did not find it necessary to exclude the members inducted by the administrative

committee which was in control before their term and therefore it must be presumed that the elected committee which had the powers to enrol members in the society had ratified the induction of those members during the reign of the administrative committee during the period from 12.10.1987 to 12.4.1988. In any event, since I have already held that in view of the Full Bench decision in Cherthala Agrl.R.D. Bank's case, the electoral roll has to be prepared including all the members who were enrolled upto 28.8.1998, I cannot countenance the prayers in W.P(C).No.30748/2006 and therefore, that writ petition is liable to be dismissed. I do so.

20. However, I dispose of W.P(C).No.30057/2006 on the following terms:

(i) Ext.P2 voters' list is quashed.

(ii) The third respondent-Returning Officer is directed to prepare a fresh voters' list including all those members who have been enrolled as members of the society upto 28.8.1998.

(iii) After preparing the voters' list accordingly, the third respondent shall complete the election process by notifying fresh dates for receipt of objections to the electoral roll, submission of objection, filing and withdrawal of nominations, date of election etc. by suitable amendments to Ext.P1 election notification.

Sd/-
S. SIRI JAGAN, JUDGE.

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///True copy///

P.A. to Judge.